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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,188	12/12/2003	Georgios Stamatas	J&J-5092	2589
27777	7590	09/29/2010		
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			EXAMINER  CHENG, JACQUELINE	
			ART UNIT	PAPER NUMBER
			3768	
			NOTIFICATION DATE	DELIVERY MODE
			09/29/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/735,188

**Applicant(s)**

STAMATAS ET AL.

**Examiner**

JACQUELINE CHENG

**Art Unit**

3768

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/220)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed June 14, 2010 have been fully considered but they are not persuasive. The examiner respectfully disagrees with the applicant's arguments that Trepagnier (US 2002/0016534) does not disclose a method of determining the effect of a treatment to the skin of a patient or a subject. Trepagnier discloses that their method, which is used for assessing changes, such as treatment related changes (effect of treatment), of structural matrix of the skin and cells of skin, may be used to assess changes due to a variety of conditions including the presence of topical chemicals (the effect of treatment being treatment to the skin) (paragraph 0116, line 7, 20). Furthermore in the same field of endeavor of measuring treatment related changes through exposing skin to UV light and measuring the fluorescence, Leffell (US 4,894,547) discloses that the method can be used to measure improvement in skin relating to treatment (measuring the effect, such as an improving effect, of a skin treatment) (col. 9 line 15-25). The examiner further believes that the combination of the specific multiple wavelength measurements, generation of ratios, and comparison of ratios for treated versus untreated skin of the claim invention is obvious in view of Trepagnier and Leffell as discussed in the previous rejection. Furthermore the examiner believes that the applicant's invention is obvious in view of the cited prior arts since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involve only routine skill in the art (In re Aller, 105 USPQ 233). The examiner believes that the general condition of the claims of creating ratios from various induced fluorescence at various wavelengths to measure

effect of treatment of the skin is disclosed in the prior art, so therefore discovering the optimum or workable ranges such as the particular intensities and ratios that are used only involve routine skill in the art. It is for these multiple reasons it is believed that the previous rejection dated March 12, 2010 still stands and is repeated below.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 11-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Trepagnier (US 2002/0016534 A1) in view of Leffell (US 4,894,547).

4. Trepagnier teaches a method of determining the effect of a treatment to the skin of a subject by measuring factors that assess changes of structural matrix of the skin, cells of skin, and other cellular components reflective of metabolic activity (cellular components reflective of the health of the skin) such as tryptophan and NADH (paragraph 0057, 0058, 0116). To measure tryptophan and NADH respectively, Trepagnier teaches directing light in the about 295 nm range causing the skin to fluoresce at approximately 345 nm, and directing light in the about 370 nm range causing the skin to fluoresce at approximately 420-520 nm (paragraph 0057) (exposing at about 295 nm and about 390-410 nm and measuring at about 340 nm and 440 nm) and calculating relative peak ratios from the measured fluorescence (paragraph 0058, 0126). The results can then be compared to measurements of developed standards or surrounding normal

tissue for use in measuring treatment related changes (paragraph 01116). Trepagnier does not explicitly disclose the particulars of how to perform this method of measuring treatment related change. In the same field of endeavor of exposing skin to ultraviolet light and measuring the fluorescence, Leffell discloses directing light at predetermined ultraviolet wavelength ranges at sun-exposed skin such as the forehead (skin having undergone treatment), measuring fluorescence emitted, and creating a ratio of the measured fluorescent intensities. This ratio is then compared to a ratio of the fluorescent intensity that is induced from directing light at a predetermined ultraviolet wavelength at non-sun-exposed skin such as the buttocks (skin not exposed to the treatment). By comparing the ratios one can determine the effect of the sun has on the skin (effect of skin treatment) (col. 2 line 15-20, col. 2 line 53-68, col. 4 line 56-60). Leffell also further discloses that besides sun exposed skin, his invention can be used to monitor improvement in skin relating to treatment (col. 9 line 15-25). In order to monitor improvement in skin it would be obvious that one must monitor the same area in order to be able to tell how the skin improves over time.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
6. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACQUELINE CHENG whose telephone number is (571)272-5596. The examiner can normally be reached on M-F 10:00-6:30.
8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 571-272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jacqueline Cheng/  
Examiner, Art Unit 3768

/Long V Le/  
Supervisory Patent Examiner, Art Unit 3768